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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

GROTH-HILL LAND COMPANY, LLC, a California limited liability company; ROBIN HILL, an individual a/k/a Robin Groth a/k/a Robin Groth-Hill; JOSEPH HILL, an individual; and CROWN CHEVROLET, a California corporation;

Plaintiffs,

vs.

GENERAL MOTORS, LLC, a Delaware limited liability company; ALLY FINANCIAL INC., a Delaware corporation as the successor-in-interest to GMAC Inc., GMAC Financial Services LLC, GMAC LLC and General Motors Acceptance Corporation; RANDY PARKER, an individual; JAMES GENTRY, an individual; KEVIN WRATE, an individual; INDER DOSANJH, an individual; CALIFORNIA AUTOMOTIVE RETAILING GROUP, INC., a Delaware Corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No.: C-13-01362 TEH

PLAINTIFFS' CONSOLIDATED OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

Action Removed: March 26, 2013

Hearing Date: May 20, 2013
Time: 10:00 a.m.

Courtroom 2, 17th Floor
Hon. Thelton E. Henderson

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Plaintiffs Groth-Hill Land Company, LLC, Robin Hill, Joseph Hill (hereinafter the "Groth Plaintiffs") and Crown Chevrolet (hereinafter "Crown") submit this consolidated Opposition to Defendants General Motors, LLC, James Gentry, Randy Parker, Ally Financial, Inc., Kevin Wrate, California Automotive Retailing Group, Inc. and Inder Dosanjh's Motions to Dismiss. (Dkt.# 4-5, 8-10, 12, 25-27.) (The Groth Plaintiffs and Crown are hereinafter collectively referred to as "Plaintiffs.")

STATEMENT OF ISSUES TO BE DECIDED

[Civil Local Rule 7-4(a)(3)]

1. Whether Crown's claims against Parker and Gentry are barred by the United States Bankruptcy Court's 363 Sale Order.

2. Whether Crown has sufficiently plead its cause of action for Fraudulent Concealment against Ally and Wrate.

3. Whether each of Crown's claims have been brought within the applicable statute of limitations period.

4. Whether the Groth Plaintiffs have standing to assert their claims.

5. Whether the Groth Plaintiffs have adequately plead their Declaratory Relief Claim. This includes the determination as to whether the Groth Plaintiffs have adequately alleged economic duress and fraudulent inducement thus allowing them to void their release agreements with Ally and Wrate.

6. Whether the Groth Plaintiffs have sufficiently plead their fraud claims against Ally and Wrate. This includes a determination of whether the Groth Plaintiffs' claims against Ally and Wrate are plead with sufficient particularity, and whether they are barred by release, waiver, estoppel or the parole evidence rule.

7. Whether the Groth Plaintiffs have sufficiently plead conspiracy to commit fraud by Defendants GM, Parker, Gentry, Dosanjh and CARG. This includes a determination of whether the Groth Plaintiffs' claims are alleged with sufficient particularity.

8. Whether the Groth Plaintiffs' claims against GM, Parker and Gentry are barred by the United States Bankruptcy Court's 363 Sale Order.

9. Whether the Groth Plaintiffs have plead their racketeering claims with sufficient particularity.

10. Whether Robin Hill has adequately alleged her claim of Intentional Infliction of Emotional Distress. This includes a determination as to whether Robin Hill's claim was made within the applicable statute of limitations period.

11. Whether the Groth Plaintiffs have adequately alleged Unfair Business Practices.

12. Whether Dosanjh can be held individually liable for his tortious conduct.

I. INTRODUCTION AND STATEMENT OF FACTS

Plaintiff Robin Hill is a former co-owner of Groth Bros. Oldsmobile, Inc. dba Groth Bros. Chevrolet ("GBC"), an authorized GM car dealership that was once located in Livermore, California. (FAC ¶2.) Robin Hill and her brother, David Groth, owned and operated GBC dealership from the early 2000s until late 2011. (FAC ¶¶2, 42.) Robin Hill and Plaintiff Joseph Hill are husband and wife, and are co-owners of Plaintiff Groth-Hill Land Company, LLC. (FAC ¶1.) Groth-Hill Land Company is a family-owned land holding company. Id. Plaintiff Crown Chevrolet is a former franchised dealer for GM, formerly holding both Cadillac and Chevy franchises located in Dublin, California. (FAC ¶4.)

In the 2000s, with Old GM's market share declining, Defendants developed a plan to strengthen GM's position in the San Francisco East Bay market. (FAC ¶20.) As alleged in the FAC, Defendants Ally Financial, Inc. ("Ally"), Kevin Wrate, Randy Parker, James Gentry, Inder Dosanjh and California Automotive Retailing Group, Inc. ("CARG") formed a racketeering enterprise through which they would direct their efforts to strengthen GM's position in the East Bay Market. Id. Defendant General Motors LLC ("GM" or "New GM") joined this enterprise when it was formed on May 29, 2009. Id. Defendant's plan to strengthen GM's position in the market worked as follows: Parker, Gentry and Wrate would use their positions of authority at GM and Ally to coerce existing East Bay dealers to either sell their dealerships to Dosanjh's company, CARG, or surrender their dealerships altogether, eliminating Dosanjh's competition in the marketplace. (FAC ¶21.) Dosanjh would then provide the GM managers with illegal kickbacks, and allow them to control the operations of the dealerships.

Id. With this, the GM managers were able to enrich themselves personally, GM was able to gain control over the East Bay market, and Ally was able to obtain millions of dollars from the dealerships and theirs owners that it otherwise would not have received. Id. The specific facts and allegations surrounding this plan are too numerous to include in this recitation of facts. Plaintiffs have therefore attached a true and correct copy of the FAC, without exhibits, to this Opposition as Exhibit "A" so that the Court may review the allegations contained therein in their entirety. Plaintiffs further specifically reiterate and discuss many of the FAC's allegations in its legal argument contained herein.

Defendant Crown is a dealership in the East Bay Market that was targeted for control by Dosanjh and CARG. (FAC ¶29.) Through their pattern of fraud and racketeering, Defendants forced Crown to sell its Cadillac and Chevy franchises to Dosanjh and/or CARG for significantly less than fair market value. (FAC ¶¶30-40.) Crown, having only recently learned of the Defendants' scheme of fraud and racketeering, has filed suit to recover damages he suffered as a result of Defendants' wrongful conduct.

This lawsuit also involves personal claims that are owned exclusively by the Groth Plaintiffs. The wrongful acts undertaken by Defendants, as detailed in the FAC, created legal rights owned by GBC. However, GBC's legal rights are not at issue in this case. The sole legal issues raised by the FAC, and the sole remedies sought by the Groth Plaintiffs, are to redress wrongful acts undertaken by the Defendants against the Groth Plaintiffs individually.

As was the case with Crown, GBC was also targeted by Defendants for either transition to Dosanjh, or for closure. (FAC ¶43.) In furtherance of Defendants' plan to transition or shut down GBC, Defendants engaged in fraud and racketeering directed at the Groth Plaintiffs individually. Defendants' plan to put GBC out of business also included a plan whereby the Defendants would bilk the Groth Plaintiffs out of money and property to which the Defendants would not otherwise be entitled. (FAC, ¶¶ 49-50.) Defendants' plans to put GBC out of business therefore included defrauding the Groth Plaintiffs and requiring them to individually: i) sign personal guaranties in favor of Ally covering all of the dealership's debt, ii) give Ally a first position deed of trust on Plaintiffs' property, iii) agree in writing that the dealership was in default and that Ally had a right to terminate Groth Bros. Chevrolet's floor plan, iv) execute a release in favor of Ally, releasing it from all wrongful conduct, v) waive their right to a jury trial, and then vi) sell the property they had just purchased for $3.1 million for $1.7 million, and v) pay Ally $1,770,852.04, representing all of the proceeds from the sale of their property. (FAC, ¶¶ 50-73.) In the end, Defendants' plan worked: GBC was forced into bankruptcy and all of its assets were sold to a company owned by Dosanjh and CARG. (FAC ¶¶ 73-76.) The Groth Plaintiffs have therefore brought the instant action to recover their individual damages as a result of Defendants' fraud and racketeering activities.

For purposes of a Motion to Dismiss, the court must assume the Plaintiffs' allegations are true, and must construe the complaint in the light most favorable to the Plaintiff. Federal Rule of Civil Procedure 12(b)(6); *Cahill v. Liberty Mutual Ins. Co.*, 80 F. 3d 336, 337-338 (1996 9th Cir.) Taking all the statements in the First Amended Complaint (hereinafter "FAC") as true, Plaintiffs satisfy the pleading requirements for each cause of action alleged. The facts alleged in the FAC, which must be assumed to be true for purposes of this motion, indicate that Plaintiffs have pled facts sufficient to support each of their causes of action. As a result, Defendants' Motions to Dismiss must be denied.

II. LEGAL ARGUMENT

A. Pleading Standards on a 12(b)(6) Motion.

The sole issue raised by a 12(b)(6) motion is whether the facts pleaded would, if established, support a plausible claim for relief. When ruling on a 12(b)(6) motion, the court must "accept as true all of the factual allegations set out in plaintiff's complaint, draw inferences from those allegations in the light most favorable to plaintiff, and construe the complaint liberally." *Rescuecom Corp. v. Google Inc.*, 562 F3d 123, 127 (2009 2nd Cir.) The threshold requirement is that plaintiffs "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 129 S.Ct. 1937, 1949-1950 (2009). In ruling on a 12(b)(6) motion, the court must decide whether the facts alleged, if true, would entitle the plaintiff to some form of legal remedy. Unless, the answer is unequivocally "no," the motion must be denied. *Conley v. Gibson*, 355 U.S. 41, 45-56 (1957); *De La Cruz v. Tormey*, 582 F.2d 45, 48 (1978 9th Cir.).

Since Plaintiffs' allegations must be taken as true and the First Amended Complaint must be viewed in the light most favorable to the Plaintiffs, Defendants' Motions to Dismiss must be denied because Plaintiffs' First Amended Complaint supports the causes of action alleged. Plaintiffs are required to provide only a short and plain statement of the claim showing entitlement to relief, which they have done. Nothing more is required of Plaintiffs at this early stage.

B. Crown Chevrolet's Claims

1. The Bankruptcy Court's Approval of GM's 363 Sale Cannot Relieve the Individual Defendants of Liability for their Individual Tortious Actions.

Parker and Gentry attempt to relieve themselves of any liability for their own actions by claiming that the United States Bankruptcy Court's order approving the 363 sale of Old GM ("363 Order") bars any claims against them. However, Parker and Gentry's argument misconstrues the content and the intent of the 363 Order. The Bankruptcy Court's 363 Order was meant to shield the purchaser of Old GM (i.e., New GM) from any liability created by the actions of Old GM. As indicated in the 363 Order, "the Purchaser shall not have any *successor, transferee, derivative, or vicarious liability…*" See RJN, Ex. B, ¶46 (emphasis added). Crown understands and has complied with this intent, as it has not attempted to sue New GM. However, the 363 Order does not shield individual former employees of Old GM from their own individual tortious activities, and Parker and Gentry can point to no authority for this proposition. "An agent or employee is always liable for his or her own torts, whether the principal is liable or not, and in spite of the fact that the agent acts in accordance with the principal's directions." *3 Witkin, Summary 10th* (2005) Agency, § 199, p. 252 [citing Cal. Civ. § 2343(3); *Perkins v. Blauth,* 163 Cal. 782, 787 (1912); *Bayuk v. Edson,* 236 Cal. App. 2d 309, 320 (1965); *Michaelis v. Benavides,* 61 Cal. App. 4th 681, 686 (1998)].

As is detailed in the FAC, Parker and Gentry each acted on their own behalf, and each individually received benefits as a result of their fraudulent and racketeering activities. Parker and Gentry each, individually, received illegal kickbacks from Dosanjh and CARG for their actions. FAC, ¶27. Parker individually received accommodations and entertainment from Dosanjh and CARG, received a free trip to New York on a private jet, had a free car given to his girlfriend, and had his cell phone paid for. FAC, ¶27. Gentry was given a new job with CARG. FAC, ¶27. Both Parker and Gentry individually committed tortious acts against Crown, and benefitted individually from the commission of these torts. They are not relieved of this individually tortious liability simply because they remained employed by New GM for a time.

2. Crown has Sufficiently Plead Its Cause of Action for Fraudulent Concealment.

Crown has alleged that Defendants Ally, Wrate and Parker engaged in fraudulent concealment, and that Defendant Gentry engaged in the conspiracy to defraud. To adequately allege fraudulent concealment, Crown must show that the Defendants, (1) concealed or suppressed a material fact, (2) were under a duty to disclose the fact to the Crown, (3) intentionally concealed or suppressed the fact with the intent to defraud Crown, (4) that Crown was unaware of the fact and would not have acted as he did if it had known of the concealed or suppressed fact, and that (5) as a result of the concealment or suppression of the fact, Crown sustained damage. *Kaldenbach v. Mutual of Omaha Life Ins. Co.*, 178 Cal. App. 4th 830, 850 (2009). Claims for fraud must be brought within three years. *Cal Civ. Pro. §338(d).*

a. Ally and Wrate Owed Crown a Duty to Disclose the Concealed Facts.

Defendants Ally and Wrate seek to dismiss Crown's claims, arguing that Ally and Wrate lack a duty to Crown, and that absent any such duty, Crown cannot maintain its cause of action for fraudulent concealment. Ally and Wrate wrongly assume that one must allege a fiduciary relationship to prove a concealment claim. As discussed below, a fiduciary relationship is only one of four methods to show a duty was owed to Plaintiff. *LiMandri v. Judkins,* 52 Cal. App. 4th 326, 336 (1997).

To establish fraud based on the nondisclosure of facts, a plaintiff must allege that defendant "was under a legal obligation to disclose [the facts]." *Lingsh v. Savage,* 213 Cal. App. 2d 729, 753 (1963). Although a duty to disclose typically arises when a defendant owes a fiduciary duty to plaintiff, it is not the only way to establish such a duty. *Jones v. ConocoPhillips,* 198 Cal. App. 4th 1187, 1199 (2011) [citing *Magpali v. Farmers Group, Inc.,* 48 Cal. App. 4th 471, 482 (1996) and *LiMandri v. Judkins,* 52 Cal. App. 4th at 336]. Generally, nondisclosure can constitute actionable fraud when one of four circumstances exist: (1) the defendant is in a fiduciary relationship with the plaintiff; (2) the defendant had exclusive knowledge of material facts not known to plaintiff; (3) the defendant actively conceals a material fact from the plaintiff; and/or (4) the defendant makes partial representations but also suppresses some material facts. *LiMandri v. Judkins,* 52 Cal. App. 4th at 336.

Here, Crown adequately alleges three of the factors addressed in *LiMandri*: (1) Defendants had exclusive knowledge of material facts not known to Crown; (2) Defendants actively concealed a material fact from Crown; and (3) Defendants made partial representations to Crown, but also suppressed some material facts. Based on any one of these three grounds, the Defendants had a duty to disclose the undisclosed material facts to Crown. The material facts that Ally and Wrate failed to disclose to Crown include, but are not limited to: (1) that Ally, Wrate, Old GM, Parker, Gentry, Dosanjh and CARG were all working together to funnel business to Dosanjh and/or CARG (FAC ¶78); (2) that Ally and Wrate had no intention of allowing Crown to remain in business, and instead intended to force Crown to sell its Cadillac and Chevrolet franchises to Dosanjh and/or CARG (FAC ¶78); (3) that all demands for payments made by Ally and Wrate upon Crown were not legitimate business requests, but were designed solely to put substantial financial pressure on Crown (FAC ¶81); and (4) that this financial pressure was put on Crown so that it would be forced to either terminate or sell its Cadillac and Chevrolet franchises so that they could be funneled to Dosanjh or CARG. (FAC ¶81).

As alleged, Defendants concealed and omitted information of which they had exclusive knowledge (that the financial pressure asserted on Crown was meant solely to put them out of business, and that Defendants had already devised a plan to funnel Crown's Cadillac and Chevrolet dealerships to Dosanjh or CARG by any means necessary). Defendant also failed to disclose and/or actively concealed information by making partial, misleading representations to Crown. See *Roddenberry v. Roddenberry,* 44 Cal. App. 4th 634, 666 (1996) (Even if a fiduciary relationship is not involved, a non-disclosure claim arises where the defendant makes representations but fails to disclose additional facts which materially qualify the facts disclosed, or which render the disclosure likely to mislead.) Defendants' partial and misleading representations led Crown to believe that its only option for alleviating its financial pressures was to sell its Cadillac and Chevy franchises to Dosanjh and/or CARG and well below the market rate.

Defendants Ally and Wrate further argue that they had no duty to Crown because, although they may have a duty to not engage in intentional torts, they have no duty to disclose that they are engaged in any such intentional tort. However, Defendants fail to explain how they feel this rule applies to the present case, and fail to provide any analysis whatsoever regarding this statement. This statement should therefore be disregarded on these grounds alone. Moreover, the case cited by Defendants, *Bank of America Corp. v. Sup. Ct.,* 198 Cal. App. 4th 862 (2011), is distinguishable from, and irrelevant to, the current matter. In *Bank of America,* the plaintiff alleged that *Bank of America* concealed its intent to defraud investors. Here, Crown has not alleged that Defendants concealed their intent to defraud Crown, but rather that Defendants concealed important material facts from Crown, namely that Defendants had no intention of allowing Crown to remain in business, and instead intended force Crown to sell its Cadillac and Chevrolet franchises to Dosanjh and CARG.

Defendants' failure to disclose material information for which it had exclusive knowledge, the representation of partial truths, and their concealment of material facts all support a finding that Ally and Wrate owed a duty to Crown. As such, Crown has sufficiently pleaded its cause of action for fraudulent concealment.

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b. Crown's Fraudulent Concealment Claim Is Within the Statute of Limitations Period.

Claims for fraud must be brought within three years. *Cal Civ. Pro. §338(d).* However, "[t]he cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake. *Id.* Defendants argue that Crown should have discovered their wrongful conduct no later than October 2008, when the fraud is alleged to have occurred. However, this argument fails to recognize that Crown is alleging fraudulent *concealment*. The very nature of a fraudulent concealment cause of action is that the facts constituting the fraud were concealed from Crown. Given that the fraud was itself an act of concealment, it defies logic to claim that Crown should have discovered the fraud while it was occurring.

In their Motion to Dismiss, Ally and Wrate claim that Crown's cause of action for fraudulent concealment is based on the theory that Ally's curtailment demands were not legitimate business requests. Ally and Wrate argue that whether these curtailment charges were legitimate business requests depends on the terms of the parties' wholesale lending agreement. This is simply untrue. Crown does not allege in its FAC that the financial pressure asserted by Ally was improper under the terms of the wholesale lending agreement. Rather, Crown alleges that the financial pressure asserted by Ally was improper because it was part of a larger conspiracy among all of the Defendants to force Crown to either shut down or sell its Cadillac and Chevy franchises to Dosanjh and/or CARG. This conspiracy is not something that Crown could have discovered by reading the terms of Ally's wholesale lending agreement.

Moreover, Crown has alleged in its Complaint that it did not discover the fraudulent concealment, nor could it have reasonably done so, until late 2012 when Costello was subpoenaed to testify as a witness in this case. (FAC ¶91). To save a claim that would otherwise be barred on its face, a plaintiff need only plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence. *E-Fab, Inc. v. Accountants, Inc. Services,* 153 Cal. App. 4th 1308, 1319 (2007). Here, Crown has adequately alleged both. Crown alleges in its FAC that:

> Costello independently obtained a copy of the underlying Complaint from the Alameda County Superior Court and learned that other dealers had also been targeted by [Defendants] for closure. Upon learning of such events, Costello conducted a thorough and prompt investigation into the matter, by actively seeking out other individuals who he thought may have knowledge of the events. Costello then immediately began interviewing the individuals, and upon discovery of the facts surrounding his claim, filed this lawsuit. (FAC ¶91).

Defendants may also argue that Crown failed to act diligently to discover their acts of fraudulent concealment. However, whether a plaintiff has exercised reasonable diligence in discovering the facts constituting the cause of action is a question of fact for the court or jury to decide. *Cleveland v. Internet Specialties West, Inc.,* 171 Cal. App. 4th 24, 31 (2009). [See also *E-Fab, Inc. v. Accountants, Inc. Services,* 153 Cal.App.4th at 1320, quoting *Bastian v. County of San Luis Obispo,* 199 Cal. App. 3d 520, 527 (1988), "[O]nce properly pleaded, belated discovery is a question of fact."]

Based on the foregoing, Crown has adequately alleged its claim of fraudulent concealment and has adequately alleged that it failed to discover Defendants' fraudulent concealment until late 2012. Any determination as to whether Crown exercised reasonable diligence in discovering Defendants' fraudulent concealment is a question of fact, not properly decided on a Motion to Dismiss.

3. Crown's Racketeering Claim is Within the Applicable Statute of Limitations Period.

The statute of limitations for a RICO claim is four years. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.,* 483 U.S. 143, 156 (1987). In the Ninth Circuit, the accrual date for civil RICO claims is determined by application of the "injury discovery" rule. *Pincay v. Andrews,* 238 F. 3d 1106, 1109 (9th Cir. 2001) [citing *Grimmett v. Brown,* 75 F.3d 506, 511 (9th Cir.1996)]. Under this rule, the civil RICO limitations period begins to run when a plaintiff knows or should know of the injury that underlies his cause of action. *Id.* Here, as detailed in the FAC, Crown did not discover its injury, nor should it have discovered its injury, until late 2012. Moreover, even if Crown is found to have known of its injury in October 2008, the statute of limitations for its RICO claim was tolled as a result of Defendants' fraudulent concealment until late 2012.

a. Crown Did Not Know of Its Injury Until Late 2012.

The statute of limitations on a civil RICO claim begins to run when a plaintiff knows or should know of the injury that underlies his cause of action. *Id.* A party should know of an injury if he has enough information to warrant an investigation which, if reasonably diligent, would have led to discovery of the claim. *See Id.* at 1110 [citing *Beneficial Standard Life Insurance Co. v. Madariaga,* 851 F. 2d 271, 275 (1988 9th Cir.)]. Normally, a court must leave the question of whether a plaintiff knew or should have known of his injury to the jury. *Living Design, Inc. v. E.I. Dupont de Nemours & Co.,* 431 F. 3d 353, 365 (2005 9th Cir.) (citing *Beneficial Standard Life Ins. Co. v. Madariaga,* 851 F. 2d at 275). "[W]here the issue of limitations requires determination of when a claim begins to accrue, the complaint should be dismissed only if the evidence is so clear that there is no genuine factual issue and the determination can be made as a matter of law." *Sisseton-Wahpeton Sioux Tribe v. United States,* 895 F. 2d 588, 591 (1990 9th Cir.).

Here, Crown suffered injury when, as a result of Defendants' racketeering activity, it was forced to sell its Cadillac and Chevy franchises to Dosanjh and/or CARG at less than fair market value. However, Crown did not know of its injury at the time the injury occurred. Rather, it knew only that it was under extreme financial pressure, and that it was selling its Cadillac and Chevy franchises to the only dealer Old GM told Crown they were willing to approve. Crown did not know that Defendants' were engaged in a conspiracy to shut its dealerships down, or that being forced to sell its franchises was in fact an injury. Further, a reasonable person in Crown's position (i.e., a dealership suffering extreme financial pressure from its lending institution, and selling to what appears to be the only available buyer) would have no reason to believe that he needed to investigate the situation for potential racketeering activities as there are many situations in which an owner is forced to sell its franchise for less than fair market value that do not involve fraud or racketeering activity. More importantly, Crown was unaware of the need to investigate the circumstances surrounding its sale of its

Cadillac and Chevy franchises until late 2012 when Costello was subpoenaed to testify as a witness in this case. (FAC ¶118.) The determination as to whether Crown was reasonably diligent in investigating its "injury" is a question of fact, which cannot be determined at the pleading stage. Thus, at this stage of the pleadings, the Court cannot find that Defendants have met their burden of proving the statute of limitations has run on this claim.

b. The Statute of Limitations Was Tolled as a Result of Defendants' Fraudulent Concealment.

Moreover, even if this Court could determine that Crown should have investigated its injury, the statute of limitations for the RICO claim is equitably tolled during the time Defendants fraudulently concealed their actions. Equitable tolling doctrines, including fraudulent concealment, also apply in civil RICO claims. *Pincay,* 238 F. 3d at 1109 (quoting *Grimmett,* 75 F.3d at 514). The doctrine is properly invoked if a plaintiff establishes affirmative conduct upon the part of the defendant which would, under the circumstances of the case, lead a reasonable person to believe that he did not have a claim for relief. *Id.* at 1110 (quoting *Volk v. D.A. Davidson & Co.,* 816 F.2d 1406, 1415 (1987 9th Cir.) (quotations and internal quotations omitted). As discussed in section II(B)(6) at p. 14 below, Defendants actively and fraudulently concealed their actions from Crown. As a result of Defendants' active concealment, Crown was unable to discover, and a reasonable person could not have been expected to discover, its injury until late 2012 when Costello was subpoenaed to testify as a witness in this case. Moreover, upon discovery of fact that may constitute a claim, Crown immediately and diligently investigated its claims. This Court should therefore find that the statute of limitations was equitably tolled until at least late 2012, and Crown's RICO claim is therefore timely made.

4. Crown's Breach of the Covenant of Good Faith and Fair Dealing Claim is Within the Statute of Limitations Period.

The statute of limitations for breach of the covenant of good faith and fair dealing based on a written contract is four years. See *Aced v. Hobbs–Sesack Plumbing Co.,* 55 Cal. 2d 573, 583 (1961). An action for breach of contract generally accrues when the contract is breached. *Romano v. Rockwell Int'l, Inc.,* 14 Cal. 4th 479, 488, (1996). Certain breaches, however, are not actionable until plaintiff discovered or should have discovered the breach or other facts giving rise to the action. This "delayed discovery" rule applies when the alleged breach is difficult to detect and where the harm flowing from the breach will not be reasonably discoverable by plaintiff until a future time. *April Enterprises, Inc. v. KTTV,* 147 Cal. App. 3d 805, 832 (1983). In such circumstances, the statute of limitations period begins when plaintiff knew or should have known of the breach. *Id.*

Crown has alleged that Ally breached the covenant of good faith and fair dealing with regard to the Wholesale Financing Agreement between them when Ally repeatedly demanded monthly curtailments, audits and other payments. [FAC, ¶116 (a)-(c)] Ally argues that these alleged breaches occurred in 2008, and thus, the four year statute of limitations has run on Crown's claim. However, as indicated in the FAC and as discussed in greater detail above, Crown was unaware that Ally was not dealing with them in good faith, and therefore was unaware of the breach of the covenant of good faith and fair dealing until late 2012, when Costello was subpoenaed as a witness in this matter. (FAC ¶130). It was only then that Crown began to investigate the claims of fraud and racketeering and discovered that (1) Defendants were engaged in a conspiracy to funnel all dealerships in the San Francisco East Bay market to Dosanjh and/or CARG, and (2) the demands for monthly curtailments, audits and other payments made by Ally were not legitimate business requests, but rather were made solely to put undue financial pressure on Crown to force Crown to sell its Cadillac and Chevy franchises to Dosanjh and/or CARG. In situations such as this, "[w]here the rule of discovery applies, the issue of whether discovery of the cause of action was reasonably delayed is a question of fact. The question becomes a matter of law only where reasonable minds can draw only one conclusion from the proffered evidence." *Pereira v. Dow Chemical Co.,* 129 Cal. App. 3d 865, 874 (1982). Because Ally concealed the true purpose for its curtailments, audits and demands for payment from Crown, it was impossible for Crown to discover that the demands were not made in good faith. As such, the statute of limitations did not begin to run until late 2012, when Crown discovered the breach. Moreover, under the discovery rule, whether Crown was diligent in discovering Defendants' breach of the covenant of good faith and fair dealing is a question of fact, not properly decided on a Motion to Dismiss. Ally's Motion to Dismiss on statute of limitations grounds should therefore be overruled.

5. Crown's Unfair Business Practices Claim is Within the Statute of Limitations Period.

The statute of limitations for a violation of Unfair Competition Law ("UCL") is four years. Bus. & Prof. Code, §17208. As indicated by Defendants in their Motion to Dismiss, the time of accrual for an UCL cause of action is governed by the common law accrual rules for the underlying causes of action. *Aryeh v. Canon Business Solutions, Inc.*, 55 Cal. 4th 1185, 1196 (2013). Crown has alleged that Defendants engaged in unfair competition as a result of their fraud, racketeering, and breach of the covenant of good faith and fair dealing. Therefore, for the same reasons addressed elsewhere herein, Crown contends that the statute of limitations on its unfair business practices claims did not begin to accrue until late 2012, when Crown first discovered Defendants' unfair and fraudulent acts and racketeering activity.

6. The Statute of Limitations on Crown's Claims were Equitably Tolled as a Result of Defendants' Fraudulent Concealment.

To the extent that this Court finds that any of Crown's claims fall outside of the applicable statute of limitations, this Court should toll the applicable statute of limitations and find that Crown's claims are nevertheless timely, due to Defendants' fraud and concealment. A defendant's fraud in concealing a cause of action against him acts to toll the applicable statute of limitations. *Regents of University of California v. Superior Court,* 20 Cal. 4th 509, 533 (1999). This equitable tolling extends beyond causes of action for fraud; courts may also toll the limitations period for all causes of action affected by the concealment. *River Colony Estates General Partnership v. Bayview Financial Trading Group, Inc.,* 287 F. Supp. 2d 1213, 1222 (2003 S.D. Cal.). To establish equitable tolling, a party must establish (1) fraudulent conduct by the defendant resulting in concealment of the operative facts that are the basis of the cause of action; (2) plaintiffs failure to discover the operative facts; and due diligence by the plaintiff until discovery of those facts. *Sagehorn v. Engle,* 141 Cal. App. 4th 452, 460-461 (2006). Crown has established each of these requirements. Crown has adequately alleged fraud on the part of Defendants; Defendants do not allege otherwise in their Motions to Dismiss. Crown has also sufficiently alleged that it was unaware of the Defendants' fraud, conspiracy and racketeering activities until late 2012 when Costello was subpoenaed to testify as a witness in this case. (FAC ¶91, ¶118.) Upon discovering that it may have been victim of fraud and racketeering in late 2012, Crown immediately obtained a copy of the underlying complaint in this matter and undertook a prompt investigation. (FAC ¶¶91, 118.) Crown was thus diligent in discovering its claims.

Defendants argue that, although Crown alleges it did not discover, nor could it have discovered, that it had been injured until late 2012, "Crown Chevrolet is incorrect." However, whether Crown is correct is not for Defendants, or this Court, to decide at this stage of the proceedings. Whether the statute of limitations for a cause of action should be equitably tolled depends on facts outside of the pleadings, and is therefore the question "is not generally amenable to resolution on a Rule 12(b)(6) motion." *Supermail Cargo, Inc. v. U.S.*, 68 F. 3d 1204, 1206-07 (1995 9th Cir.) [quoting *Cervantes v. City of San Diego,* 5 F. 3d 1273, 1276 (1993 9th Cir.)] "A motion to dismiss based on the running of the statute of limitations period may be granted only 'if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.'" Id. [quoting *Jablon v. Dean Witter & Co.*, 614 F. 2d 677, 682 (1980 9th Cir.)] Moreover, the question of whether a plaintiff should have discovered the wrongdoing alleged is a question of fact for a jury. *Mosesian v. Peat, Marwick, Mitchell & Co.*, 727 F. 2d 873, 877 (1984 9th Cir.). This question may be decided as matter of law only when uncontroverted evidence irrefutably shows that plaintiff discovered or should have discovered fraudulent conduct on a date so early as to invoke the statute of limitations bar. *Id.* Here, no such uncontroverted evidence exists. Because Crown has plead that it did not discover the wrongdoing of Defendants until late 2012, and given that Defendants can show no reason why this Court should find that Crown should have discovered Defendants' fraud, this Court must deny Defendants' Motions to Dismiss on these grounds. Defendants should not be allowed to benefit from their own deception. *Regents of University of California v. Superior Court,* 20 Cal. 4th at 533.

C. The Groth Plaintiffs' Claims.

1. The Groth Plaintiffs have Standing to Allege Each of Their Claims.

Defendants maintain that the Groth Plaintiffs lack standing to sue under RICO because the alleged injuries were sustained by GBC, and not the Groth Plaintiffs individually. This argument overlooks the fact that the Groth Plaintiffs' each individually suffered injuries as a result of Defendants' racketeering. As alleged in the FAC, the Groth Plaintiffs were individually injured by Defendants when they were forced to give Ally a first deed of trust on their $3.1 million property, and later were forced to sell the property at a loss and give all of the proceeds from the sale to Ally. (FAC ¶¶54, 56, 201.) The Groth Plaintiffs' individual injuries are not negated by the fact that GBC also suffered injury at the hands of the Defendants.

Defendants cite to several cases, including *Sparling v. Hoffman Construction*, 864 F. 2d 635 (1988 9th Cir.), for the proposition that shareholders and creditors do not have standing to assert RICO claims where the injury is derivative of the injury to the corporation. *Id.* at 641. However, Defendants fail to acknowledge that *Sparling*, along with many of the other cases cited by Defendants, notes that a business owner can have standing if the owner alleges an injury distinct from other shareholders. *Id.* at 640 (stating that the plaintiffs, "must show…an injury distinct from that to other shareholders…if they are to have standing to assert RICO claims based on injury to the corporation"). [See also *Mid-State Fertilizer Co. v. Exchange Nat. Bank of Chicago,* 877 F. 2d 1333, 1336 (7th Cir. 1989), "When [guarantors] suffer direct injury – injury independent of the firm's fate – they may pursue their own remedies."]

Here, the Groth Plaintiffs are pursuing recovery for injuries they sustained individually and independent of the injuries sustained by GBC. Although the facts surrounding the Groth Plaintiffs' claims include an explanation of the harm that GBC suffered at the hands of the Defendants, it is not these harms for which the Groth Plaintiffs seek recovery. Rather, the Groth Plaintiffs seek to recover for the wrongs committed against them individually, which caused them to incur individual damages. These damages include the Groth Plaintiffs individually being forced to provide Ally with a first position deed of trust on their $3.1 million property, sell their property at a substantial loss, and give all proceeds from the sale to Ally. (FAC, ¶¶149-150, 156, 159, 166, 184.)

Defendants argue that because Plaintiff Groth-Hill Land Company was a guarantor of GBC's debt, any action they have is a derivative action, and thus Groth-Hill Land Company lacks individual standing. However, again, this simplistic analysis ignores the fact that Groth Plaintiffs were individually defrauded, and were harmed individually as a result of Defendants' action. At the time Defendants began their scheme of fraudulent and racketeering activity, the Groth Plaintiffs were not guarantors of GBC's debts. (FAC ¶49.) In fact, Ally had no guarantee of GBC's debts. (FAC ¶49.) Knowing this, and concerned about their ability to recoup their money once they put GBC out of business, Defendants devised a plan to bilk the Groth Plaintiffs out of as much money as possible before they put GBC out of business. (FAC ¶49-50.) Thus, Wrate approached Robin Hill on behalf of the Defendants and informed her that Ally intended to terminate GBC's floor plan unless the Groth Plaintiffs agreed to sign personal guarantees covering GBC's debt and provided Ally with a first deed of trust on the Groth-Hill Land Company's newly acquired property. (FAC ¶50.) Again, the Groth Plaintiffs were under no obligation to comply with this demand. However, unaware that the Defendants had entered into a conspiracy to put GBC out of business regardless of whether the Groth Plaintiffs complied with Ally's demands, the Groth Plaintiffs complied with each of Ally's requests, to their individual detriment. Thereafter, Wrate forced the Groth Plaintiffs to engage in a fire sale of their $3.1 million property, and give all of the proceeds of the sale to Ally. (FAC ¶¶56, 201). As a result of Defendants' fraud and racketeering activities, the Groth Plaintiffs were individually injured in that they were forced to sell the property they had just purchased and give all the proceeds to Ally and lost $300,000 in land entitlements as a result of the "fire-sale" of their property. (FAC ¶21.)

Further, the pleadings reveal that GBC was not the sole target of Defendants' fraud and racketeering activities. As discussed in the FAC, Defendants also individually targeted Plaintiff Robin Hill, a fact that can be evidenced by Dosanjh's statement, made about Robin Hill, that, "I'm going to put that cunt out of business, and GM is going to help me do it." (FAC, ¶57.)

Defendants cannot in good faith argue that Robin Hill lacks standing to assert causes of action for fraud and racketeering for which she was a *personal* target.

Moreover, the case at hand is distinguishable from cases cited by Defendants, such as *Lui Ciro, Inc. v. Ciro, Inc.*, 895 F. Supp. 1365 (1995 D. HI.), where the guarantors would have suffered no loss if the loans to the underlying company were honored. Here, the harms alleged would have been suffered by the Groth Plaintiffs regardless of whether GBC itself suffered any damages. The Groth Plaintiffs were injured before GBC was ever forced out of business by the Defendants' fraud and racketeering. The Groth Plaintiffs were individually approached and defrauded. The Groth Plaintiffs were then individually forced to provide Ally with a first deed of trust on their property, sell their property at a loss, and forced to give Ally all of the proceeds from the sale *before* Defendants terminated GBC's floor plan and forced GBC into bankruptcy. Thus, even if GBC had ultimately thrived, the Groth Plaintiffs would have sustained damages as its property had already been sold, and the proceeds had already been given to Ally. Because each of the Groth Plaintiffs have sustained individual damages, independent of any damage to GBC, they have standing to assert their claims and any Motion to Dismiss on these grounds must be denied.

2. The Groth Plaintiffs Had Adequately Plead Their Declaratory Relief Claim.

a. The Groth Plaintiffs have Adequately Alleged Economic Duress.

At common law, California recognizes a cause of action for economic duress to set aside a contract. A cause of action for economic duress exists "where necessary steps are taken to protect property or business interests from threat of wrongful action by others and when there are reasonable grounds for believing that such threat would be carried out." *Pacific Telephone and Telegraph v. Granite Construction Company*, 225 Cal. App. 2d 765, 769-770 (1964); see also *Leeper v. Beltraml*, 53 Cal. 2d 195, 207 (1959); and *Rich v. Whillock, Inc. v. Ashton Development, Inc.*, 157 Cal. App. 3d 1154, 1158-59 (1984). Ally and Wrate argue in their Motion to Dismiss that the doctrine of economic duress does not apply to their actions because they were merely doing that which they had a legal right to do. However, California Courts have held that a defendant need not have committed a tort or crime for their acts to be sufficiently wrongful so as to merit a claim of economic duress. *Rich v. Whillock, Inc.*, 157 Cal. App. 3d at 1158-59. This principle has been articulated as follows:

> "As it has evolved to the present day, the economic duress doctrine is not limited by early statutory and judicial expressions requiring an unlawful act in the nature of a tort or a crime. [citations.] Instead, the doctrine now may come into play upon the doing of a wrongful act which is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure. [citations.]" *Id.*

In the complaint, the Groth Plaintiffs plead specific independent wrongful acts that support the legal pleading requirement for this cause of action. Specifically, the Groth Plaintiffs allege as follows:

> "[I]n the mid-2000s the Defendants engineered a plan to illicitly use this enterprise to engage in a pattern of racketeering activity throughout the San Francisco East Bay market. The overarching plan worked as follows: Randy Parker, Jim Gentry and Kevin Wrate would use their positions of authority at GM and Ally to coerce existing East Bay dealers to either sell their dealerships to Dosanjh's company, California Automotive Retailing Group, or surrender their dealerships altogether, eliminating Dosanjh's competition in the marketplace. Dosanjh would then provide the GM managers with illegal kickbacks, and allow them to control the operations of the dealerships. With this, the GM managers were able to enrich themselves personally, GM was able to gain control over the East Bay market without running afoul of California's newly-tailored prohibition of factory-owned stores, and Ally was able to obtain millions of dollars from the dealerships and theirs owners that it otherwise would not have received. (FAC ¶21)

As illustrated by the above paragraph and elsewhere throughout the FAC, the Groth Plaintiffs allege that Ally and Wrate engaged in illegal racketeering activity and fraud, all in an effort to put undue pressure on GBC so that the dealership could be funneled to Dosanjh and CARG. (FAC ¶¶ 21, 153, 154, 178, 179, 181.) However, recognizing that Ally did not have a personal guarantee for any of GBC's debt and that they would be losing a substantial amount of money if GBC went out of business without a guarantee in place, Ally and Wrate devised a plan whereby Ally would assert financial pressure on GBC, and would then approach the Groth

Plaintiffs and inform them that unless they entered into various personal guaranties, provided Ally with a first deed of trust on their property, and executed a release in favor of Ally, Ally would close GBC. (FAC ¶50.) Ally and Wrate did this over and over again, each time using their fraudulent scheme to assert financial pressure on GBC, and each time informing the Groth Plaintiffs they would only "work" with GBC if the Groth Plaintiffs continued to release them of their wrongdoing. (FAC ¶¶52, 55, 64.) Defendants conspired to put economic pressure on the Groth Plaintiffs so that they could then force the Groth Plaintiffs to release them for the exact wrongful conduct they had just engaged in. Clearly, the Groth Plaintiffs have pled a viable independent wrongful act at common law in pursuing these causes of action. Because the failure to assert a wrongful act is the only basis for Ally and Wrate's Motion to Dismiss the Groth Plaintiff's claim of undue influence, their Motion on this grounds should be denied.

b. The Groth Plaintiffs have Adequately Alleged Fraudulent Inducement.

Fraud in the inducement occurs when a party knows what they are signing, but their asset is induced by fraud. *Hinesley v. Oakshade Town Center*, 135 Cal. App. 4th 289, 294 (2005). Defendants argue that the Groth Plaintiffs cannot adequately plead fraudulent inducement because they cannot establish justifiable reliance on the promises made by Ally and Wrate as it relates to the agreements entered into after April 19, 2010. However, the Groth Plaintiffs have not alleged fraudulent inducement as a basis for declaring invalid any agreements after April 19, 2010; for these agreements the Groth Plaintiffs have alleged undue influence, economic duress and unclean hands. (FAC ¶209.)

With regard to all agreements entered into before April 19, 2010, the Groth Plaintiffs have adequately alleged fraudulent inducement. (FAC ¶208.) Defendants argue that with regard to these agreements, the Groth Plaintiffs' claims fail because Ally only engaged in acts which it was permitted to do under the terms of the agreements. Ally provides no legal support for this contention. As the California Supreme Court has noted, "a promise made without any intention of performing it is one of the forms of actual fraud; and cases are not infrequent where relief against a contract reduced to writing has been granted on the ground that its execution was procured by means of oral promises fraudulent in the particular mentioned, however variant from the terms of the written engagement into which they were the means of inveigling the party." *Langley v. Rodriguez,* 122 Cal. 580, 581-82 (1898). Regardless of the terms of the agreements, Ally and Wrate induced the Groth Plaintiffs to enter into the November 4, 2008, October 27, 2008, and February 13, 2009 based on fraudulent promises that they would stop harassing GBC. The Groth Plaintiffs have thus adequately alleged fraudulent inducement.

c. The Groth Plaintiffs Have Adequately Alleged Undue Influence, Unclean Hands, Waiver and Estoppel

In addition to basing their request for Declaratory Relief on the doctrine of fraudulent inducement and economic duress, the Groth Plaintiffs have also alleged that this Court should grant Declaratory Relief based on the doctrines of Undue Influence, Unclean Hands, Waiver and Estoppel. (FAC ¶210.) Ally and Wrate have failed to challenge these claims. As such, even if the Court finds no economic duress or fraudulent inducement existed, the Tenth Cause of Action must be allowed to proceed on the additional grounds alleged.

3. The Groth Plaintiffs' Fraud Claims Against Ally and Wrate are Adequately Alleged.

Ally and Wrate argue in their Motion to Dismiss that the Groth Plaintiffs have failed to sufficiently allege their fraud claims against Defendants. For the foregoing reasons, this is simply untrue.

a. The Groth Plaintiffs' Fraud Claims Are Not Barred by Release.

Ally and Wrate first argue that the Groth Plaintiffs' claims are barred as a result of the execution of release agreements. However, as discussed in Section II(C)(2)(a-c), at p. 18-21 above, these agreements are void as a result of Defendants' fraudulent inducement, economic duress, undue influence, waiver and estoppel. Based on these principles, the release agreements signed are void and do not act to bar the Groth Plaintiffs' claims.

b. The Groth Plaintiffs' Claims are Not Barred by Waiver or Estoppel.

Ally and Wrate next argue that the Groth Plaintiffs' claims are barred as a result of waiver and estoppel. However, the case cited by Ally and Wrate for this proposition, *Oakland*

Raiders v. Oakland-Alameda County Coliseum, Inc., 144 Cal. App. 4th 1175 (2006), deals with the waiver of the claim of *fraudulent inducement*. For the reasons addressed above, the Groth Plaintiffs' fraudulent inducement claim (which is solely related to their Declaratory Relief claim) is properly plead.

Moreover, with regard to general fraud claims, it is well-established that "[t]here can be no waiver unless the relinquishment is intentional or is the result of an act which, according to its natural import, is so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Rheem Mfg. Co. v. United States*, 57 Cal. 2d 621, 626 (1962). All waivers are intentional. *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Café & Takeout III, Ltd.*, 30 Cal.App.4th 54, 60 (1994). Here, the Groth Plaintiffs in no way waived their right to claim fraud by executing release agreements, which were only obtained through Ally and Wrate's use of economic duress and undue influence. Ally and Wrate cannot be allowed to benefit from their wrongful conduct by claiming that the Groth Plaintiffs intentionally waived claims via a voidable release agreement which they were induced to sign as a result of duress. Moreover, "the existence of waiver is ordinarily a question of fact." *Oakland Raiders*, 144 Cal. App. 4th at p. 1191. It is a question of law only "where the underlying facts are undisputed, or the evidence is susceptible of only one reasonable conclusion." *Id.* The case here is not free of disputes, nor is the evidence susceptible of only one reasonable conclusion. Thus, the determination of whether the Groth Plaintiffs' waived their claim of fraud is not properly decided on Motion to Dismiss.

c. The Groth Plaintiffs' Claims are Not Barred by the Parol Evidence Rule.

Ally and Wrate argue that the parol evidence rule bars the Groth Plaintiffs' claim of fraud. In support of this contention, Defendants cite to a string of cases, including *Banco Do Brasil, S.A. v. Latian, Inc.*, 234 Cal. App. 3d 973 (1991). However, to the extent that the cases cited by Defendants stand for the proposition that the parol evidence rule bars evidence of fraud, these cases have been expressly overruled by the California Supreme Court. The California Supreme Court has held:

> The fraud exception has been part of the parol evidence rule since the earliest days of our jurisprudence, and the [*Bank of America Nat. Trust & Savings Ass'n v. Pendergrass,* 4 Cal.2d 258, 260 (1935)] opinion did not justify the abridgment it imposed. **For these reasons, we overrule *Pendergrass* and its progeny**, and reaffirm the venerable maxim stated in *Ferguson v. Koch, supra,* 204 Cal. at page 347, 268 P. 342: **"[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud."** (Emphasis added) *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n,* 55 Cal.4th 1169, 1182 (2013).

Based on the foregoing, Ally and Wrate's claim that the Groth Plaintiffs' claims are barred by the parol evidence rule is without merit.

d. Ally and Wrate Had a Duty to Disclose the Concealed Facts.

Ally and Wrate next argue that, "as discussed *supra* at p. 14" of their Motion, they owed the Groth Plaintiffs' no duty. However, p. 14 of Ally and Wrate's Motion does not address duty. To the extent that Ally and Wrate intended to reiterate their claim regarding the duty to disclose concealed fact addressed with regard to Crown at p. 10 of their Motion, the Groth Plaintiffs incorporate herein the arguments made by Crown with regard to duty here. For the same reason that Defendants owed a duty to Crown, they also owe a duty to the Groth Plaintiffs.

e. The Groth Plaintiffs' Fraud Claims are Plead with Sufficient Particularity.

Ally and Wrate finally argue that, with regard to their fifth and sixth causes of action, the Groth Plaintiffs have failed to allege their fraud claims with sufficient particularity. Pursuant to Federal Rule of Civil Procedure 9(b), allegations of fraud must be alleged with particularity. To satisfy this burden, the complaint must "specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." *In re GlenFed, Inc. Securities Litigation,* 42 F.3d 1541, 1548, n. 7 (1994 9th Cir.) However, Rule 9(b)'s particularity requirement does not abrogate Rule 8's general requirements that a pleading contain a short and plain statement of the claim, and that each averment be simple, concise and direct. *McQueen v. Woodstream Corp.,* 244 F.R.D. 26, 34 (2007 D.D.C.) Thus, to survive a Motion to Dismiss, a plaintiff need only provide a short plain statement of each claim, providing defendants with sufficient information regarding the claims made against them. The Groth Plaintiffs have more than satisfied this requirement.

Ally and Wrate argue that the Groth Plaintiffs have merely alleged that Ally falsely promised that it would not terminate GBC's floorplan, and would stop harassing GBC, and that this allegation is insufficient to support a claim of fraud. Ally and Wrate seem to overlook the other 34 paragraphs contained in the FAC detailing with great particularity their fraudulent conduct, including detailing the who, what, when and where of each fraudulent allegation. (FAC ¶42-46.) These allegations include the following fraudulent statements and omissions made by Ally and Wrate:

- Ally and Wrate actively concealed the fact that they, along with Old GM, New Old, Parker, Gentry, Dosanjh and CARG, devised a conspiracy whereby they were going to force GBC out of business, and that even if the Groth Plaintiffs undertook the acts requested of them, Ally would continue to apply undue financial pressure on them and GBC until GBC went out of business. (FAC ¶153.)

- In October 2008, Wrate told Robin Hill that Ally was going to terminate the GBC's floorplan unless the Groth Plaintiffs gave Ally personal guarantees and additional collateral. Specifically, Wrate told Robin Hill that the Groth Plaintiffs would be required to: i) sign personal guaranties in favor of Ally covering all of the GBC's debt, ii) give Ally a first position deed of trust on their newly acquired property, iii) agree in writing that the dealership was in default and that Ally had a right to terminate the floorplan, iv) execute a release in favor of Ally, releasing it from all wrongful conduct, v) waive their right to a jury trial, and vi) pay Ally the amounts it was demanding within 90 days. (FAC ¶50.) Wrate further informed Robin Hill that if the Groth Plaintiffs agreed to give Ally the requested personal guarantees and additional collateral, Ally would not terminate GBC's floor plan, and would stop harassing the dealership. (FAC ¶51.)

- In or about February 2009, Wrate informed Robin Hill that if the Groth Plaintiffs agreed to sell their property within 90-days and give Ally $700,000 in cash, Ally would note terminate GBC's floorplan, and would stop harassing the dealership. This sentiment was also repeated by Brian Lazer of Ally. (FAC ¶54)

In ignorance of the Defendants' conspiracy to put GBC out of business, and in reliance on Ally and Wrate's representations that Ally would not terminate GBC's floorplan and would stop harassing the dealership, the Groth Plaintiffs complied with each of Ally and Wrate's requests for personal guarantees, cash payments and releases. The Groth Plaintiffs were under no obligation to provide Ally and Wrate with the requested personal guarantees, cash payments and releases, and thus providing these monetary benefits to Ally and Wrate based on their fraudulent concealment and fraudulent statements resulted in a benefit to Ally, and damaged the Groth Plaintiffs. (FAC ¶49-50) These facts, along with the other facts adjoining them, sufficiently plead a claim for fraud against Ally and Wrate.

4. The Groth Plaintiffs Have Sufficiently Alleged Conspiracy to Commit Fraud Against GM, Parker, Gentry, Dosanjh and CARG.

a. The Groth Plaintiffs' Conspiracy to Commit Fraud Claim is Alleged with Sufficient Particularity.

GM, Parker, Gentry, Dosanjh and CARG each argue that, with regard to their fifth and sixth causes of action, the Groth Plaintiffs have failed to allege their conspiracy to commit fraud claims with enough particularity to satisfy Rule 9(b). Again, to satisfy this burden, the complaint must "specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." *In re GlenFed, Inc. Securities Litigation,* 42 F. 3d at 1548, n.7. However, although fraud claims must be plead with particularity, all that is required – indeed, all that is allowed – is a short, plain, simple, concise and direct statement, as is reasonable under the circumstances. *Carrigan v. California State Legislature,* 263 F. 2d 560, 565 (1959 9th Cir.)

Moreover, in cases such as this, where the facts constituting the conspiracy are particularly within the defendants' knowledge, the pleading requirements of Rule 9(b) are relaxed. *Lui Ciro, Inc. v. Ciro, Inc.* 895 F. Supp. at 1374. See *Nevada ex rel. Steinke v. Merck & Co., Inc.,* 432 F.Supp.2d 1082, 1089 (2006 D. Nev.), "the pleading requirement is also relaxed 'with respect to matters within the opposing party's knowledge. In such situations, plaintiffs cannot be expected to have personal knowledge of the relevant facts.' Rule 9(b) is therefore satisfied if the complaint provides notice of the alleged misrepresentations." [quoting *Neubronner v. Milken,* 6 F. 3d 666, 672 (1993 9th Cir.)]. This was also the ruling in *National Council on Compensation Ins., Inc. v. Caro & Graifman, P.C.*, 259 F. Supp 2d 172, 179 (2003

D. Conn.), where the court held that conclusory allegations of scienter are sufficient to meet particularity requirements for stating a fraud claim, if supported by facts giving rise to an inference of fraudulent intent. See also *Scheidt v. Klein*, 965 F. 2d 963, 967 (1992 10th Cir.) (holding that allegations of fraud may be based on information and belief when facts in question are within opposing party's knowledge and complaint sets forth a factual basis for plaintiff's belief.) Here, because facts related to the formation and execution of the Defendants' conspiracy, fraud and racketeering activities are all based on facts within the Defendants' control, the particularity requirement is not strictly applied.

Even if the Groth Plaintiffs were required to meet the more stringent Rule 9(b) requirement, their 66 page FAC meets that standard. As reflected therein, the Groth Plaintiffs allege that GM, Parker, Gentry, Dosanjh and CARG participated in, and conspired to defraud the Groth Plaintiffs, as follows:

- In the mid-2000s Defendants engineered a plan to engage in a pattern of racketeering activity throughout the East Bay market. The plan worked as follows: Parker, Gentry and Wrate would use their positions of authority at GM and Ally to coerce existing East Bay dealers to either sell their dealerships to Dosanjh's company, CARG, or surrender their dealerships altogether, eliminating Dosanjh's competition in the marketplace. Dosanjh would then provide the GM managers with illegal kickbacks, and allow them to control the operations of the dealerships. (FAC ¶21.)

- To accomplish their goal, Defendants employed the services of Wrate. When a specific dealer was targeted by Parker and Dosanjh, Wrate was charged with unleashing severe economic pressure on the dealer. (FAC ¶23.)

- After Wrate had applied financial pressure, Gentry would strong-arm the owner into selling. If Gentry's tactics didn't work, Wrate would terminate the dealer's floorplan (as occurred in the case of GBC). (FAC ¶24.)

- In exchange for funneling dealerships to Dosanjh and closing his competitors, Parker and Gentry received illicit kickbacks from Dosanjh and CARG. (FAC ¶27.) Dosanjh and CARG provided Parker with free accommodations and entertainment in Hawaii and other cities throughout the United States, paid for his cell phone, took him on a free trip to New York on a private jet, and gave one of his girlfriends a free car. (FAC ¶27.) Dosanjh and CARG provided Gentry with a high paying job at CARG as the Chief Operating Officer. (FAC ¶27.)

- Defendants targeted GBC as a dealership to be either transitioned to Dosanjh or closed, giving Dosanjh complete control of the local market. (FAC ¶43.)

- In furtherance of this plan, Ally targeted GBC and the Groth Plaintiffs. (FAC ¶44.) Wrate informed Robin Hill that Ally was going to terminate the GBC's floorplan, but that Ally would agree to not take the drastic action if the Groth Plaintiffs gave the bank personal guarantees and additional collateral. Specifically, Wrate told her that the Groth Plaintiffs would be required to: i) sign personal guaranties in favor of Ally covering all of the dealership's debt, ii) give Ally a first position deed of trust on their newly acquired property, iii) agree in writing that the dealership was in default and that Ally had a right to terminate the floorplan, iv) execute a release in favor of Ally, releasing it from all wrongful conduct, v) waive their right to a jury trial, and vi) pay Ally the amounts it was demanding within 90 days. (FAC ¶50.) The Groth Plaintiffs complied with each of Ally's requests.

- Dosanjh was involved in orchestrating these financial pressures on GBC. First, as addressed above, Dosanjh and CARG provided Gentry and Parker with illicit kick-backs as a means of incentivizing them to participate in the fraud. Moreover, on multiple occasions, Dosanjh and Wrate discussed how Ally was going to apply financial pressure to GBC to put it out of business. Dosanjh also personally targeted Robin Hill in the conspiracy, claiming, "I'm going to put that cunt [Robin Hill] out of business, and GM is going to help me do it." (FAC ¶57.)

Defendants argue that the Groth Plaintiffs fail to show how they were harmed by the alleged conspiracy. However, as addressed in detail in Section II(C)(1), at p. 16 above, the Groth Plaintiffs have adequately alleged that they have suffered individual injury as a result of the conspiracy to defraud and racketeering activities of Defendants. Defendants further argue that the Groth Plaintiffs have failed to show any "wrongful act" on their part. This is ludicrous. Defendants acted wrongly when they engaged in a conspiracy to defraud the Groth Plaintiffs and deprive them of their property. Defendants GM, Parker and Gentry further engaged in wrongful conduct when Parker received kickbacks for their participation in the fraud and racketeering, and Dosanjh and CARG engaged in wrongful conduct when they provided Parker and Gentry with the alleged kickbacks. These facts, and the others that adjoin them, demonstrate that each of the Defendants was intimately involved in the conspiracy to defraud the Groth Plaintiffs. These facts demonstrate the formation of the conspiracy, the wrongful acts done pursuant to the conspiracy, and the damage resulting from the acts, all of which give rise to an inference of fraudulent intent. Thus, the Groth Plaintiffs have sufficiently plead each of their claims of conspiracy against GM, Parker, Gentry, Dosanjh and CARG.

b. The Groth Plaintiffs' Fraudulent Concealment Claim is Sufficiently Alleged.

For the same reasons set forth with regard to Crown's allegations of fraudulent concealment and Defendants' duty to disclose concealed facts, as addressed in (II)(B)(2) above, the Groth Plaintiffs have adequately alleged fraudulent concealment against each of the Defendants in this matter.

c. The Bankruptcy Court's 363 Order Does Not Relieve the GM Defendants of Liability

As with Crown, above, GM, Parker and Gentry again attempt to relieve themselves of liability for their individual wrongdoing based on the United States Bankruptcy Court's 363 Order. However, as discussed in greater detail in Section (II)(B)(1), at p. 5 above, the 363 Order was not meant to shield the Defendants from their own individual tortious activities. This is particularly true with regard to the tortious acts of the Defendants committed after July 5, 2009, the day the 363 Order was issued. Thus, Gentry and Parker remain individually liable for all of their individually tortious conduct, and GM is liable for all of its acts in ratifying and joining the conspiracy against the Groth Plaintiffs after the issuance of the 363 Order.

5. The Groth Plaintiff's Racketeering Claims are Adequately Plead.

To state a claim under RICO, Plaintiffs must allege that Defendants (1) conducted or participated in the conduct, (2) of an enterprise, (3) through a pattern of (4) racketeering activity, and (5) they were injured. *18 U.S.C. § 1962(c)*. See *Sedima, S.P.R.L. v. Imrex Co., Inc.,* 473 U.S. 479 (1985). The Groth Plaintiffs satisfy each of these requirements.

a. The Groth Plaintiffs Have Standing to Assert their Claims and Have Established Proximate Cause.

Defendants argue that the Groth Plaintiffs lack standing to bring their RICO claims, and have failed to allege proximate cause. As discussed in greater detail in Section (II)(C)(1), at p. 16 above, and for the reasons asserted therein, the Groth Plaintiffs have standing to assert their

RICO claims. Defendants next argue that the Groth Plaintiffs have failed to show that the Defendants' RICO violation was the "but for" cause of their injury. A plaintiff's injury must be proximately caused by the defendant's RICO violation. *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 267-274 (1992). However, proximate cause is not cut and dry. *Id.* at 272 (stating that proximate cause is a flexible concept that does not lend itself to "a black letter rule that will dictate the result in every case.") The central question of proximate cause is, "whether the alleged violation led directly to the plaintiff's injuries. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006). Defendants were engaged in racketeering, and conspiracy to commit racketeering, aimed at putting GBC out of business. In furtherance of this conspiracy, Defendants targeted the Groth Plaintiffs and sought to bilk them out of as much money as possible before GBC was terminated. (FAC ¶49-50.) As detailed in Section (II)(C)(1), at p.16 above, and in greater detail in the FAC, in furtherance of their racketeering scheme, Defendants forced the Groth Plaintiffs to give Ally a first deed of trust on their property, and then forced them to sell the property at a loss, and give all of the proceeds to Ally. (FAC ¶¶54, 56, 201.) This injury was separate and distinct from any injury to GBC. The Groth Plaintiffs thus have suffered direct, foreseeable and intended injury as a result of Defendants' racketeering activities. The Groth Plaintiffs' injuries were thus proximately caused by Defendants' racketeering activities.

b. The Groth Plaintiffs Have Plead the Predicate Acts of Mail and Wire Fraud with Sufficient Particularity.

To establish a pattern of racketeering activity, the Groth Plaintiffs must show that Defendants have committed at least two acts of racketeering activity in the last ten (10) years. *18 U.S.C. §1961(5).* Racketeering activities include mail fraud and wire fraud. *Id.* §1961(1)(B). To establish mail fraud as an element of a racketeering scheme, Plaintiff must show that, "(1) the defendants formed a scheme or artifice to defraud; (2) the defendants used the United States mails or caused a use of the United States mails in furtherance of the scheme; and (3) the defendants did so with the specific intent to deceive or defraud." *Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.*, 806 F. 2d 1393, 1400 (1986 9th Cir.) The

United States Supreme Court has found that in a mail and wire fraud cases, the mailings need only be in furtherance of a scheme to defraud, and do not themselves need to be fraudulent or untrue. *Schmuck v. U.S.,* 489 U.S. 705 (1989). Thus, the Groth Plaintiffs need not plead fraudulent content of the mailings and wires sent, they need only allege that the mailings and wires were used in furtherance of the racketeering scheme.

Defendants argue that the Groth Plaintiffs have failed to plead Defendants' predicate act of mail fraud with sufficient particularity. This is simply untrue. As detailed throughout this Opposition, and as detailed in the FAC ¶¶42-76, Defendants engaged in numerous acts of fraud and racketeering, all of which are plead with specificity. In furtherance of their fraud and racketeering scheme, Defendants sent numerous letters and emails to the Groth Plaintiffs. The details of these letters, including format, date, sender and recipient, are all included in the FAC at ¶¶174-175. The specific content of these letters and emails need not be alleged because they need not contain fraudulent statements; it is enough that they were sent in furtherance of the fraudulent scheme. Thus, Defendants' claim that the Groth Plaintiffs' claims should be dismissed for failure to allege the content of the mailings and emails is without merit. However, even should this Court determine that the content of the mailings and emails is necessary to survive a Motion to Dismiss, the Groth Plaintiffs can easily amend their FAC to include this information.

c. The Groth Plaintiffs Have Identified Each Defendants' Predicate Acts of Fraud With Sufficient Particularity.

Defendants argue that the Groth Plaintiffs have failed to allege sufficient facts regarding their individual involvement in the fraudulent scheme underlying the Groth Plaintiffs' racketeering claims. "[T]here is no absolute requirement that where several defendants are sued in connection with an alleged fraudulent scheme, the complaint must identify *false statements* made by each and every defendant. 'Participation by each conspirator in every detail in the execution of the conspiracy is unnecessary to establish liability, for each conspirator may be performing different tasks to bring about the desired result.'" *Swartz v. KPMG LLP,* 476 F. 3d 756, 764-765 (9th Cir. 2007) [quoting *Beltz Travel Service, Inc. v. Int'l Air Transp. Ass'n,* 620

F. 2d 1360, 1367 (1980 9th Cir.)] In a fraud suit involving multiple defendants, a plaintiff need only, "identif[y] the role of [each] defendant[ ] in the alleged fraudulent scheme." *Id.* [quoting *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir.1989)].

The fraudulent scheme engaged in by each of the Defendants is the same scheme which gives rise to the Groth Plaintiffs' Fifth and Sixth Causes of Action for fraud and concealment. As discussed in Section (II)(C)(3)(e), at p. 23 above, the Groth Plaintiffs have pleaded that Ally and Wrate engaged in fraudulent conduct with the requisite level of particularity. As discussed in Section (II)(C)(4)(a), at p. 25 above, the Groth Plaintiffs have also pleaded that GM, Gentry, Parker, Dosanj and CARG engaged in fraudulent conduct with the requisite level of particularity. Thus, Defendants' Motions to Dismiss on these grounds must be denied.

6. Robin Hill's Intentional Infliction of Emotional Distress Claim is Sufficiently Plead.

Defendants Dosanjh and CARG have alleged that Robin Hill has failed to adequately allege her cause of action for intentional infliction of emotional distress ("IIED"). Defendants GM, Parker and Gentry have joined in this argument, without independent analysis. Defendants Ally, Wrate, GM, Parker and Gentry allege that Robin Hill's IIED claims were not made within the applicable statute of limitations. For the foregoing reasons, each of the Defendants' arguments is without merit.

The elements for the tort of IIED are: (I) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiffs' suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Christensen v. Sup. Ct.,* 54 Cal. 3d 868, 903 (1991). Robin Hill has sufficiently alleged each of these prima facie elements.

a. Defendants' Actions Were Directed at Robin Hill.

Defendants argue that their actions were not directed at Robin Hill. This argument is without merit. As alleged in the FAC, Dosanjh and CARG engaged in conduct directed toward Robin Hill, with the intention of putting, "that cunt out of business." (FAC ¶191.) The actions taken by CARG and Dosanjh with regard to Robin Hill were taken not only to gain market share, but also to specifically harm Robin Hill, whom Dosanjh considered to be a "cunt" out of business. Thus, Dosnajh and CARG's actions were clearly directed at Robin Hill.

Moreover, even if the actions alleged are found to have been directed at GBC and not at Robin Hill, this is sufficient to establish a claim for IIED. Conduct need not be directed at an individual plaintiff if the defendant is aware, but acts with reckless disregard, of the plaintiff and the probability that the defendant's actions will cause the plaintiff severe emotional distress. *Christensen v. Sup. Ct.*, 54 Cal. 3d at 905. Clearly Defendants knew that defrauding Robin Hill, participating in a conspiracy to shut down her families dealership and conspiring to steal the real property that she and her family purchased would cause Robin Hill severe emotional distress. (FAC ¶191.) This was clearly Dosanjh's goal, as he was only too happy to inform people that he was putting "that cunt out of business." (FAC ¶191.) Thus, Defendants' argument that their actions were not directed at Robin Hill, and not reasonably certain to cause her emotional distress, is without merit.

b. Defendants' Actions Were Outrageous.

Dosanjh and CARG next argue that Robin Hill has failed to allege that Dosanjh and CARG's actions were "outrageous." Generally, conduct is considered outrageous and will be found to be actionable if the "recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " *Berkley v. Dowds,* 152 Cal. App. 4th 518, 533-534 (2007) (quoting Rest. 2d Torts §46.) Whether a defendant's conduct is outrageous is generally a question of fact. *Murphy v. Allstate Ins. Co.*, 83 Cal. App. 3d 38, 51 (1978). If reasonable persons may differ, it is for the jury to determine whether the conduct was, in fact, outrageous. *Berkley v. Dowds,* 152 Cal. App. 4th at 533-534. Here, as addressed ad nauseum throughout the FAC, Defendants participated in a conspiracy to put Robin Hill out of business, both to gain control over the San Francisco East Bay market, and to satisfy an unexplainable personal vendetta against Robin Hill. An average member of the community reading the contents of the FAC would certainly be shocked and outraged by the

Defendants' conduct. Further, the question of whether Defendants' conduct was sufficiently outrageous is a question for a jury, not properly decided here.

c. Robin Hill Has Suffered Severe Emotional Distress.

Finally, Defendants argue that Robin Hill failed to allege that her emotional distress was sufficiently severe. For emotional distress to be considered severe, the distress must be substantial or enduring. *Fletcher v. Western Nat. Life Ins. Co.,* 10 Cal. App. 3d 376, 397 (1970). However, the "recent trend has been to require less severe distress in pleadings and proof than is required in the Restatement." 5 Witkin, Summary 10th (2005) Torts, § 452, p. 671 [quoting *Newby v. Alto Riviera Apartments,* 60 Cal. App. 3d 288, 298 (1976)]. Whether the plaintiff's emotional distress is severe is generally a question of fact. *Murphy v. Allstate Ins. Co.,* 83 Cal. App. 3d at 51.

Robin Hill has alleged that she suffered severe emotional distress including embarrassment and humiliation as a result of Defendants' actions. (FAC ¶188-191, 193.) This emotional distress resulted from Defendants' conspiring to put Robin Hill out of business, thus financially devastating and humiliating her and her family. This level of emotional distress satisfies the "severe emotional distress" standard. Severe emotional distress was found to exist in *Fletcher*, even where the plaintiff's suffered no shock, horror, or similar physical effects, and where most of the plaintiff's distress resulted from his unfortunate economic situation. In finding sufficient facts to support a finding of IIED, the court indicated that severe emotional distress "may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry." *Fletcher v. Western Nat. Life Ins. Co.,* 10 Cal. App. 3d at 397. The court found that the plaintiff's concern about losing his home and other financial stresses, all continuing for many months, supported a finding of severe emotional distress. *Id.* at 397-398. This is exactly the sort of emotional distress that Defendants subjected Robin Hill to. Thus, Robin Hill has sufficiently alleged that she was subjected to severe emotional distress as a result of Defendants' actions. Further, the question of whether Robin Hill's emotional distress is sufficiently severe is a question for a jury, not properly decided here.

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d. Robin Hill's Intentional Infliction of Emotional Distress Claim Was Filed Within the Statute of Limitations Period.

Defendants Ally, Wrate, GM, Parker and Gentry do not allege that Robin Hill failed to satisfy the pleading requirements of an IIED claim. Rather, these Defendants argue that Robin Hill's emotional distress occurred outside of the statute of limitations for IIED claims. Defendants wrongly cite to *Cal. Civ. Pro. §340* for the proposition that the statute of limitations for IIED claims is one year. Effective January 1, 2003, *Cal. Civ. Pro. §335.1* extended the statute of limitations to two years. Defendants allege that the last action constituting IIED occurred in December 2010, or early 2011. Applying the correct two year statute of limitations, Robin Hill's claim, which was filed on October 25, 2012, was filed within the limitations period.

Even under the alleged one year statute of limitations, Robin Hill's IIED claim was timely. Where a defendant's wrongful conduct continues over a period of years, the point at which it becomes sufficiently outrageous, and the plaintiff's distress sufficiently severe, is a question of fact, and the cause of action may not accrue (and the statute may not begin to run) at the time the wrongful conduct is commenced. See *Murphy v. Allstate Ins. Co.,* 83 Cal. App. 3d at 51 (note that *Murphy* was decided under the old, one year statute of limitations). Here, Robin Hill has alleged that the severity of her emotional distress did not manifest itself, and thus her cause of action for IIED did not accrue, until November 2011. (FAC ¶193.) Thus, Robin Hill's claim, filed on October 25, 2012, was made within the limitations period.

7. The Groth Plaintiffs' Unfair Business Practices Claim is Adequately Plead.

Cal. Bus. & Prof. Code § 17200, et. seq., makes it unlawful for one to engage in, "any unlawful, unfair or fraudulent business act or practice..." Plaintiffs have alleged that Defendants engaged in all three acts of unfair competition when they, (1) formed a conspiracy to fraudulently take property belonging to the Groth Plaintiffs, (2) engaged in racketeering activity, and (3) fraudulently took property belonging to the Groth Plaintiffs. Defendants argue that because they believe all other claims by the Groth Plaintiffs are not actionable, neither are their claims for Unfair Business Practices. However, as discussed at length above, each of the Groth Plaintiffs' claims are adequately plead. It therefore follows that, because the Groth Plaintiffs' other claims for fraud and racketeering survive, so must their claim for unfair competition.

Defendant GM next argues that the Groth Plaintiffs' unfair competition claim is based wholly on their claims that Defendants engaged in conduct that is unlawful under RICO, and that because RICO does not provide for injunctive relief, an unfair competition claim that includes an allegation of a RICO violation cannot provide for injunctive relief. However, GM offers no legal support for this contention.[1] Moreover, GM's argument fails to recognize that the Groth Plaintiffs' unfair competition claims are based not only on Defendants' RICO violations, but also on Defendants' conspiracy to fraudulently take property belonging to the Groth Plaintiffs. Thus, even if GM's argument that the Groth Plaintiffs' claims are pre-empted by federal RICO laws, this pre-emption would not affect the Groth Plaintiffs' ability to obtain an injunction preventing any further fraudulent activity.

Defendants CARG and Dosanjh argue that, because the Groth Plaintiffs injury occurred in 2011, there is no basis for an injunction. However, this argument fails to recognize that the Groth Plaintiffs allege that Defendants engaged in unfair conduct, "as part of a larger scheme to gain control of the San Francisco East Bay Marketplace," and that this fraudulent activity does not necessarily end when the Groth Plaintiffs' property was taken from them. The Court's power to allow injunctive relief when there is a threat of continuing unfair business practices is "extraordinarily broad." *People v. First Federal Credit Corp.*, 104 Cal. App. 4th 721, 735-736 (2002) [citing *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal. App. 4th 499, 540 (1997)] Because the San Francisco East Bay Marketplace consists of a vast number of dealerships spread across hundreds of miles, there is certainly a risk that Defendants' fraudulent activity could continue.

[1] GM does cite to Religious Technology Center v. Wollersheim, 796 F. 2d 1076, 1084 (9th Cir. 1986), for the proposition that injunctive relief is not available in RICO claims. However, this case does not address whether injunctive relief is available in unfair competition claims based on RICO violations.

The Groth Plaintiffs' unfair competition claim, which seeks to enjoin this continued fraud, is therefore properly plead.

8. Dosanjh May be Held Individually Responsible for His Wrongdoing Toward the Groth Plaintiffs.

Dosanjh seeks to dismiss the fifth through sixth causes of action against him on the grounds that the alleged actions were not taken by him, but by the corporate entity for whom he works. However, it is well established that officers and directors of a corporation may be held liable for wrongful acts in which they participated, of which they had knowledge, or of which they should have had knowledge. *See, e.g. Donsco, Inc. v. Casper Corp.*, 587 F. 2d 602, 606 (1978 3d Cir.); *PMC, Inc. v. Kadisha*, 78 Cal. App. 4th 1368 (2000). Clearly, "[t]he legal fiction of the corporation as an independent entity was never intended to insulate officers and directors from liability for their own tortious conduct." *PMC, Inc.*, 78 Cal. App. 4th at 1380. "A corporate officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf." *Coastal Abstract Service, Inc. v. First American Title Ins. Co.*, 173 F. 3d 725, 734 (1999 9th Cir.) [quoting *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F. 2d 1001, 1021 (1985 9th Cir.)]. To establish such a liability, a plaintiff need only show that the officer or director, "specifically authorized, directed or participated in the allegedly tortious conduct; or that although they specifically knew or reasonably should have known that some hazardous condition or activity under their control could injure plaintiff, they negligently failed to take or order appropriate action to avoid the harm." *Frances T. v. Village Green Owners Assn.*, 42 Cal. 3d 490, 508 (1986) (citations omitted).

In his Motion to Dismiss, Dosanjh does not dispute that he is an officer or director of Defendant CARG. The Groth Plaintiffs have alleged that, in that capacity, Dosanjh directed or controlled the actions of CARG in connection with CARG's alleged fraud, racketeering, IIED and unfair business practices, all of which led to the Groth Plaintiffs' injuries. The Groth Plaintiffs have therefore properly alleged that Dosanjh controlled the operations of CARG such that he is personally liable for the acts committed against them, regardless of the fact that the acts may have been committed through a corporate entity. *See PMC, Inc. v. Kadisha,* 78 Cal. App. 4th at 1380. Dosanjh cannot be allowed to avoid liability for wrongful acts that he participated in by hiding behind the corporate shield. *Id.*

In addition to alleging that Dosanjh acted on behalf of CARG, Plaintiffs also allege that Dosanjh acted in his individual capacity. For example, in their FAC Plaintiffs allege that the conspiracy and pattern of racketeering alleged throughout was "[b]ased on a long-standing personal relationship that GM manger Randy Parker had with Inder Dosanjh," that, "Inder Dosanjh was intimately involved in orchestrating these financial pressures on Groth Bros. Chevrolet" and that, "Dosanjh would then provide the GM managers with illegal kickbacks." (FAC, ¶21, 57.) Moreover, Plaintiffs have alleged that Dosanjh's actions were taken not only to help CARG secure control of the East Bay Market, but also to satisfy Dosanjh's personal (albeit unexplained) vendetta against Robin Hill, a fact that can be evidenced by Dosanjh's statement, made about Robin Hill, that, "I'm going to put that cunt out of business, and GM is going to help me do it." (FAC ¶57.) Dosanjh attempts to relieve himself of any such personal liability by claiming that an agent or employee of a corporation cannot conspire with the corporation. However, this argument fails to acknowledge that Dosanjh is alleged to have conspired with GM, Parker, Gentry, Ally and Wrate. Dosanjh is not relieved from his participation in this conspiracy simply because CARG was also a part of the conspiracy.

D. Leave to Amend

While Plaintiffs maintain that they have adequately plead each of the causes of action in their First Amended Complaint, if this Court is inclined to grant any portion of Defendants' Motions to Dismiss, Plaintiffs respectfully request that they be afforded the right to amend its First Amended Complaint. Where a Motion to Dismiss is granted, "leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.,* 806 F.2d at 1401 [citing *Bonanno v. Thomas,* 309 F.2d 320, 322 (9th Cir.1962).] See also *Broam v. Bogan,* 320 F3d 1023, 1028 (9th Cir. 2003) (Dismissal with prejudice proper only in "extraordinary" cases). Accordingly, if the Court grants Defendants' Motions to Dismiss, Plaintiffs respectfully request that it be with leave to amend.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' Motions to Dismiss, in their entirety. In the event that the Court is included to grant the Motions, in whole or in part, Plaintiffs respectfully request that they be given leave to amend.

MICHAELS LAW GROUP, APLC

Dated: April 23, 2013

By: *__/s/ Kathryn J. Harvey, Esq.__*
Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Attorneys for Plaintiffs,
Groth-Hill Land Company, LLC,
Robin Groth-Hill and Joseph Hill

CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 2801 W. Coast Highway, Suite 370, Newport Beach, CA 92663.

On April 23, 2013, I served true copies of the following document(s):

STIPULATION TO CONSOLIDATE PLAINTIFFS' OPPOSITIONS TO DEFENDANTS' MOTIONS TO DISMISS

on all counsel of record who have consented to electronic service were served with a copy of the preceding document(s) via the United States District Court, Northern District of California CM/ECF system, as follows:

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I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I declare that I am a member of the Bar of this Court, or employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on April 23, 2013, in Newport Beach, California.

__/s/ Kathryn J. Harvey, Esq.__